

TABLE 2-1

## EMPLOYEE OR SELF-EMPLOYED

What difference does it make?

			HOW TO DECIDE IF A WORKER IS AN EMPLOYEE OR SELF-EMPLOYED
ISSUE	IF AN EMPLOYEE	IF SELF-EMPLOYED	
<b>SOCIAL SECURITY</b>	<ul style="list-style-type: none"> <li>• Employer and employee each pay FICA tax of 7.65% of employee wages (total tax of 15.3%) up to \$176,100 (2025).</li> <li>• Ministers (except for certain chaplains) are never employees with regard to their ministerial duties. (They do not pay FICA taxes).</li> <li>• Nonminister church workers who are employees for income taxes are employees for Social Security (unless church filed a timely waiver from FICA taxes on Form 8274—in which case they are treated as self-employed for Social Security).</li> </ul>	<ul style="list-style-type: none"> <li>• Pay 15.3% self-employment tax.</li> <li>• Use Schedule SE (Form 1040).</li> <li>• Ministers always are self-employed with regard to their ministerial duties (except for some chaplains).</li> <li>• Nonminister church workers who are self-employed for income taxes are self-employed for Social Security.</li> </ul>	Use income tax tests.
<b>INCOME TAXES</b>	<ul style="list-style-type: none"> <li>• Wages are reported by employer on Form W-2.</li> <li>• Wages are reported by worker on line 1 (Form 1040).</li> <li>• Unreimbursed and nonaccountable reimbursed expenses are not deductible as business expenses.</li> <li>• Audit risk is low.</li> <li>• Some fringe benefits are tax-free.</li> </ul>	<ul style="list-style-type: none"> <li>• Income over \$600 is reported by employer on Form 1099-NEC.</li> <li>• Wages are reported by worker on Schedule C and line 3 of Form 1040, Schedule 1.</li> <li>• Unreimbursed and nonaccountable reimbursed expenses may be deducted on Schedule C (check with your tax professional).</li> <li>• Audit risk is higher.</li> <li>• Some fringe benefits (such as cafeteria plans) are taxable.</li> </ul>	IRS applies a three-factor “common law employee” test or an older 20-factor test. The Tax Court has adopted various tests—all focus on the degree of control exercised by the employer over the details of how the worker performs his or her job.
<b>RETIREMENT</b>	Some retirement plans are available only to employees (including tax-sheltered annuities or 403(b) plans—for nonminister church staff).	Some retirement plans are available only to self-employed persons.	Use income tax tests.
<b>LEGAL LIABILITY</b>	Employer is liable for misconduct of employees in the course of their employment (respondent superior).	Employer generally is not liable for misconduct of self-employed workers.	Some courts follow income tax factors; others apply broader or narrower tests.